IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1508 OF 1996.

Shrirang Khanderao Rewadkar
(since deceased) through his
legal heirs

1(a) Sau. Satyabhama Shrirang Rewadkar.

1(b) Anand Shrirang Rewadkar

1(c) Dayanand Shrirang Rewadkar

1(d) Mangalrani Shriram Rewadkar

All residing at Satyashree Gandhi Nagar,
Naikwadi plot, Barsi,
District: Solapur
..Petitioner

versus

1. The State of Maharashtra,

2. The Chief Officer,
Barsi Municipal Council,
Barsi,
District: Solapur.

3. The General Secretary,
Shri Shivaji Shikshan Prasarak
Mandal, Barsi,
District: Solapur ..Respondents

Mr.S.G.Kudle for the Petitioner

Addl. Govt. Pleader for the Respondent No.1

Shri Nitin Jamdar for Respondent No.2

Shri K.Y.Mandlik for Respondent No.3

Coram : R.M.S.Khandeparkar &
S.R.Sathe, J.
Dated : 16th June, 2006

JUDGMENT (Per S.R.Sathe, J.)

1. By this Writ Petition, the petitioner has challenged the action of the respondent No.1 State of Maharashtra, refusing to take into account the Petitioner's service in Barsi Municipal Council as Class III servant for the period from 1.5.1948 to 26.5.1969 and his service in Shri Shivaji Shikshan Prasarak Mandal, B.P.Sulakhe Commerce College, Barsi, as Registrar for the period 1.7.1979 to 30.6.1983, for the purpose of pensionary benefits and recovering the amount of Rs.10,047.60 paise from the petitioner paid to him as salary during the period from 1.7.1981 to 30.6.1983.

2. Brief facts giving rise to this writ petition are as under:

. The petitioner came to be appointed as Class III employee in the Barshi Municipal Council on 1.5.1948. With a view to join the educational institution, the petitioner tendered resignation

after putting 21 years and 7 months service in the BarsI Municipal Council. On 27.5.1969 he joined as Registrar of B.P.Sulakhe Commerce College, Barsi. As per the statute 177A of the Shivaji University, Kolpahur, the retirement age of the petitioner was 60 years. However, after completing the age of 58 years, his services were continued for the period 1.7.1981 to 30.6.1983 by passing a resolution to that effect. He retired on 30.6.1983. The above resolution was passed under the assumption that retirement age for the petitioner is 58 years. The said period of two years was approved by the Director of Higher Education by letter dated 21.3.1986.

3. By issuing resolution dated 21.7.1983, the Respondent No.1 was pleased to extend the pension-cum-gratuity scheme to the teaching and non teaching staff of non agricultural universities and the affiliated non Government colleges. Similarly, respondent No.1 also passed resolution dated 14.7.1987 and made it clear that the employees belonging to the non teaching staff and working in the non agricultural universities and affiliated non government colleges who are retiring from 1.10.1982

are entitled for pensionary benefits and that such employees who have rendered their services in the schools, colleges, run by the Municipal Councils, Mahanagar Palika, their such services will be counted for the purpose of pensionary benefits.

4. It is the case of the pentioner that by virtue of the resolution passed on 12.5.1995 the respondent No.1 made it clear that teaching and non teaching staff retiring from non agricultural universities, and the affiliated non government colleges who have previously worked in the local self institutions/ Nagar Palika/ Mahanagar Palika/ and recognized aided private primary schools, their such service period will be counted as qualified service for the purpose of pensionary benefits.

5. According to the petitioner, inspite of the above mentioned position the respondent No.1 refused to take into account the petitioner’s service period in Barsi Municipal Council from 1.5.1948 to 26.5.1969 and his service period from 1.7.1981 to 30.6.1983 in B.P.Sulakhe Commerce College, Barsi, for his pensionary benefits and on the contrary he was directed to refund amount of Rs.10,047.60p which

he had received towards the period 1.7.1981 to 30.5.1983, holding that the retirement age for the Registrar was in fact 58 years. Naturally, the petitioner made representation to the respondent No.1 and prayed that his previous service in Barsi Municipal Council as well as the last two years service in the B.P.Sulakhe Commerce College be considered for pensionary benefits. However, the Respondent No.1 by letter dated 1.2.1985 rejected the petitioners claim in that behalf. Hence, petitioner has filed this petition and prayed that the Respondent No.1 be directed to count the petitioner's service in Barsi Municipal Council from 1.5.1948 to 26.5.1969 and the subsequent period from 1.8.1981 to 30.6.1983 in B.P.Sulakhe Commerce College for the purpose of pensionary benefits and to repay the amount of Rs.10,047.60p with 12% interest thereon to the petitioner.

6. After the petition was admitted and notice was issued to respondent, the Administrative Officer, Office of the Joint Director of Higher Education, Kolhapur Region, Kolhapur, filed an affidavit in reply and contended that petitioner attained the age of 58 years on 30.6.1981 and

thereafter he was continued in service for two years after obtaining approval for re-employment and as such the said period cannot be counted for pensionary benefits, as the age of super annuation for Registrar was 58 years.

7. The Administrative Officer also contended that the Government resolution dated 12.9.1995 is not applicable to the case of Petitioner as the same is applicable only to the employees who have served as teacher in Local Self Body, Nagar Palika or Mahanagar Palika. So far as the claim for the amount of Rs.10,047.60p is concerned, the same was recovered on account of management's share and not on account of the salaries paid for the period 1.7.1981 to 30.6.1983 and for that purpose the consent was obtained from the petitioner. Hence, on all these grounds he prayed for the dismissal of the petition.

8. In this petition before us, Shri Kudle, learned Advocate for the Petitioner has urged only 3 points. Firstly, he submitted that as per the statute 177A of Shivaji University, Kolhapur, the retirement age for Registrar at the relevant time

was 60 years and as such the petitioner is entitled to get the benefit of last two years service i.e. during the period from 1.7.1981 to 30.6.1983 on which day he retired on super annuation. Secondly, he canvassed before us that by virtue of resolution dated 12.9.1995 the Government has made it clear that the employee's prior service in Municipal Council/Mahanagar Palika/Local Self Institution will be taken into account while computing qualifying service for the purpose of retirement benefits. The petitioner worked in Barsi Muncipal Council from 1.5.1948 to 26.5.1969 and then in B.P.Sulakhe Commerce College which was run by Shri Shivaji Shikshann Prasarak Mandal, from 27.5.1969 to 30.6.1983. So, he has continuously worked from 1.5.1948 to 30.6.1983 and as such the entire period be taken into account for the pensionary benefits. Thirdly, he submitted that as the petitioner has actually worked during the period 1.7.1981 to 30.6.1983 and at the relevant time the retirement age was 60 years, the said period cannot be said to be the period of re-employement and as such the respondent be directed to repay the amount of Rs.10,047.60p. As against this, the learned advocate for the respondent No.1. submitted that

the resolution dated 12.9.1995 is not applicable to the petitioner and as such his service period from 1.5.1948 to 26.5.1969 can not be taken into account because he was not working as a teacher and the said resolution was applicable only to the teachers. Shri K.Y.Mandlik, the learned Advocate for the Respondent No.3 submitted that in view of the fact that as the retirement age at the relevant time was 60 years, it can be directed that the said period of last two years be taken into account for the pensionary benefits.

9. It is not in dispute that the petitioner joined the service in Barsi Municipal Council on 1.5.1948 as Class III employee and he continuously worked there till 26.5.1969 on which day he resigned and thereafter on the next day joined as Registrar of B.P.Sulakhe Commerce College, Barsi. From the perusal of the statute 177A of Shivaji University and in particular Clause VI of the same, it is very clear that the retirement age of the non teaching staff at the relevant time was 60 years. It is an admitted fact that the petitioner completed his age of 58 on 30.6.1981 and the management of the college passed resolution to continue his services from

1.7.1981 to 30.6.1983. This was obviously under the presumption that the retirement age is 58. Merely because such resolution was passed it cannot be said that the retirement age of Class III employee from non teaching staff was 58. It is tried to be argued on behalf of the respondent that by virtue of Government Resolution dated 30.8.1983 it was made clear that the age of retirement for teaching and non teaching staff in the non agricultural universities and the affiliated non Government Colleges should be 58 years for Class III employees. However, it must be noted that petitioner had already retired even prior to the issuance of this resolution and as such the said resolution is not applicable to him. Incidently, it must also be noted that the petitioner has produced alongwith the petition, a copy of letter dated 22.4.1983 written by the Vice Chancellor, Shivaji University to the Principal, DAV College in connection with some other case wherein also it is specifically mentioned that the retirement age of class III employees is 60 years. So, considering this position we have absolutely no hesitation to hold that the retirement age for the petitioner was 60 years and under the circumstances, the period from 1.7.1981 to 30.6.1983

cannot be considered as period of re-employment. Naturally, the said period shall have to be taken into account while considering petitioner's claim for pensionary benefits. Consequently, it is clear that respondent No.1 was not at all justified in recovering the amount of Rs.10,047.60p from the petitioner. Hence the respondent No.1 is bound to repay the said amount to the petitioner.

10. The next important question which falls for consideration is whether the petitioner's service in Barsi Municipal Council as Class III employee during the period 1.5.1948 to 26.5.1969 can be taken into account while calculating the qualifying service period for pension. In order to show that the petitioner is entitled for such benefit the learned advocate for the Petitioner has placed reliance on the resolution bearing No._____ (No.NGC/1293/6013/(2655)/UNI/4 dated 12.9.1995. This resolution is titled "

(For treating services rendered in the local boares, Nagar Palika, Mahanagar Palika , so also in the aided Non Government Recognised Primary Schools as teachers, for the purpose of pension) It is specifically mentioned in the said resolution "

(The Government directs that the teaching and non teaching staff, who have retired from the non agricultural universities and affiliated non government colleges, and who have previously rendered their services in the local self Government/Nagar Palika/Mahanagar Palika and also in the aided recognised private primary schools as teachers will be counted for the purpose of pension.)

11. In the affidavit filed by the Administrative Officer he has specifically mentioned that the above

mentioned resolution is not applicable to the petitioner and the same is applicable only to the persons who have served as teacher in local self body, Nagar Palika or Mahanagar Palika. From the perusal of this resolution itis clear that though Government was considering as to whether such benefit can be given to those who were serving in Local Self Body, Nagar Palika, or Mahanagar Palika, the government has actually taken the decision to give such benefit only to the persons who were working as teacher. Even in the afidavit in rejoinder filed by the petitioner he has not shown that the said resolution is applicable even to those persons who have served as non teaching staff members in the local self body/Nagar Palika/Mahanagar Palika.

12. Admittedly, the petitioner was not working as a teacher in the Barsi Municipal Council during the period 1.5.1948 to 26.5.1969, on which day he submitted resignation. Naturally, the petitioner is not entitled to get the benefit of above mentioned G.R. dated 12.9.1995. Consequently, the petitioner’s prayer that the respondent No.1 be directed to take into account his previous service

from 1.5.1948 to 26.5.1969 for his pensionary benefits cannot be accepted.

13. In this view of the matter, the petition is partly allowed. It is hereby directed that the Respondent No.1 shall take into account the petitioners service with B.P.Sulakhe Commerce College from 1.7.1981 to 30.6.1983 for his pensionary benefits.

12. The respondent No.1 shall repay the amount of Rs.10,047.60p with interest thereon at the rate of 9% per anum from the receipt of the amount till the payment of the same to the petitioner.

. Rule is made absolute in above terms.

(S.R.Sathe, J) (R.M.S.Khandeparkar, J.)